

Appln No. 10/660,815
Amdt date October 5, 2006
Reply to Office action of July 5, 2006

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Amendments to the Drawings:

The attached sheet of drawings includes changes to FIG. 4B, which has been added in response to the objection. This sheet, which includes Figs. 4B and 6-8, replaces the original sheet including Figs. 6-8.

Attachment: Replacement Sheet (1 pg)
Annotated Sheet Showing Changes (1 pg)

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REMARKS/ARGUMENTS

Claims 1-16, 18-25, 27, and 30-45 are pending in the above-referenced application.

Claims 1-7, 31, 34, and 36 have been amended and claims 37-45 added as indicated above to further define Applicant's invention.

This is a response to the Office Action dated July 5, 2006 wherein the Examiner objected to the term "disclosed" used in the ABSTRACT section; objected to the drawings for not showing a heat bar; rejected claims 1-9, 16, 18-22, 24-25, 27, 30, and 32-36 under §102(e) as being anticipated by Smith et al. (US 6,974,447); rejected claims 10-15 under §103(a) as being obvious over the '447 Smith et al. patent in view of a different Smith et al. patent (US 6,846,305); and rejected claims 23 and 31 under §103(a) as being obvious over the '447 Smith patent as applied to claim 1 further in view of Domkowski et al. (US 6,280,431). In view of the amendments indicated above and the remarks that follow, reconsideration and a notice of allowance are respectfully solicited.

Telephone Interview Summary

The summary dated September 5, 2006 for the telephone interview conducted August 30, 2006 is acknowledged. However, Applicant wish to add that only claim 1 was discussed and while several features recited were clearly distinguishable, the Examiner believes they are in a product-by-process type language and therefore contends that they did not provide patentable weight. As such, some of the independent claims have been amended to clearly recite a structure format but Applicant believes they have and continue to clearly distinguish over the art of record.

Objection to the Abstract and the Drawings

The Examiner objected to the Abstract for using the word "disclosed" and to the drawings for not including a heat bar. In response thereto, Applicant has amended the Abstract as indicated above and have amended the drawings to include FIG. 4B. The specification has also

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been amended to provide a written counter-part for new FIG. 4B. Applicant submits that no new matter has been added by the amendment.

§102(b) Rejection of Claims 1-9, 16, 18-22, 24-25, 27, 30, and 32-36 by Smith et al.

In rejecting claims 1-9, 16, 18-22, 24-25, 27, 30, and 32-36 under §102(e) as being anticipated by the '447 Smith patent, the Examiner contends that Smith disclosed all of the elements and limitations including:

. . . a nozzle, molded to the bag at an attachment point seen to be an attachment flange. The attachment flange is part of the bag and therefore has a first and a second layer joined together. The attachment flange has a first opening and a second, larger opening and comprises a fin (120) (see figures 5-8).

Preliminarily, for a reference to anticipate a claimed invention under §102(e), it must adequately meet the terms of the claimed invention interpreted in light of the specification of the application. As set forth in the statute, the single prior art reference must disclose each and every element of the claim under consideration. Moreover, it cannot be rebuilt or reoriented by the utilization of Applicant's teachings in an attempt to create an anticipatory structure.

Claim 1 has been amended as indicated above to recite a flexible container comprising: a flexible front sheet and a flexible rear sheet attached to one another along at least one edge, a container port comprising a nozzle, which has an internal diameter, integrally molded to an attachment flange, which is disposed between the flexible front sheet and flexible rear sheet; wherein the attachment flange comprises two ends and a first attachment flange layer comprising an interior surface and an exterior surface and a second attachment flange layer comprising an interior surface and an exterior surface attached to one another along at least one edge, which is located at one of the two ends, a center section located between the two ends; and wherein the two interior surfaces are spaced apart from one another at the center section and converge at the

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two ends, and wherein a distance measured between the two ends at a point spaced apart from the container port is larger than the internal diameter of the nozzle.

Thus, claim 1 clearly recites, in part, a flexible container comprising "a nozzle, which has an internal diameter, integrally molded to an attachment flange, which is disposed between the flexible front sheet and flexible rear sheet; wherein the attachment flange comprises two ends and a first attachment flange layer comprising an interior surface and an exterior surface and a second attachment flange layer comprising an interior surface and an exterior surface attached to one another along at least one edge, which is located at one of the two ends, a center section located between the two ends; and wherein the two interior surfaces are spaced apart from one another at the center section and converge at the two ends".

Applicant submits that the '447 Smith patent does not disclose each and every element of the claimed flexible container as required under §102(e). Among other things, unlike what the Examiner alleges, Smith discloses a container having a port tube 52 (FIG. 4) attached directly to the front and rear sheets of the container (FIG. 1a). The port tube 52 may be formed from a multi-laminate structure (FIGs. 2a and 2b) and is round in all embodiments shown and described, i.e., without an edge or an end and clearly not an attachment flange. The tube also has a uniform diameter with each end having similar sized openings. Because the port tube 52 is in fluid communication with the internal cavity of the bag 10, a closure 54 is used to seal the port end 116 of the port tube 52 (FIGs. 4 and 8). Finally, a spike holder 50 (FIG. 5) is attached to the port tube 52 with the first chamber 110 (FIG. 5) placed over the end portion 116 of the port tube 52 (FIG. 8). The second chamber 112 of the spike holder 50 "is dimensioned to have an interference fit with an access spike or transfer needle 117..." (Col. 9:29-31).

Thus, among other things, nowhere did Smith disclose a container comprising "a nozzle, which has an internal diameter, integrally molded to an attachment flange, which is disposed between the flexible front sheet and flexible rear sheet; wherein the attachment flange comprises two ends and a first attachment flange layer comprising an interior surface and an exterior surface and a second attachment flange layer comprising an interior surface and an exterior surface attached to one another along at least one edge, which is located at one of the two ends, a

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center section located between the two ends; and wherein the two interior surfaces are spaced apart from one another at the center section and converge at the two ends".

Because the '447 Smith reference does not disclose each and every element of the claimed flexible container recited by claim 1, it cannot anticipate claim 1 as required under §102(e). Reconsideration and a notice of allowance are respectfully requested.

Because 2-9, 16, 18-22, 24-25, 27, 30, and 32-33 depend, either directly or indirectly, from claim 1, they too are allowable over the '447 Smith reference for at least the same reasons as claim 1.

Regarding independent claim 34, it has been amended to recite a flexible container comprising: a flexible front sheet and a flexible rear sheet attached to one another along at least a portion of a common perimeter; a container port comprising a nozzle, which has an internal diameter, integrally molded to a flexible attachment flange and the attachment flange attached to the flexible front and rear sheets; wherein the flexible attachment flange comprises a first flange layer comprising an interior surface and an exterior surface attached to a second flange layer comprising an interior surface and an exterior surface; the two flange layers defining an interior cavity comprising a first opening and a larger second opening, which is larger than the internal diameter of the nozzle, in fluid communication with the nozzle; and wherein at least a portion of the interior surface of the first flange layer is configured to contact at least a portion of the interior surface of the second flange layer when the flexible attachment flange is compressed between the flexible front sheet and the flexible rear sheet.

Thus, claim 34 clearly recites a flexible container comprising "a container port comprising a nozzle, which has an internal diameter, integrally molded to a flexible attachment flange and the attachment flange attached to the flexible front and rear sheets; wherein the flexible attachment flange comprises a first flange layer comprising an interior surface and an exterior surface attached to a second flange layer comprising an interior surface and an exterior surface; the two flange layers defining an interior cavity comprising a first opening and a larger second opening, which is larger than the internal diameter of the nozzle".

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Like claim 1, Applicant submits that the '447 Smith reference does not disclose the flexible attachment flange as recited attached to the front and rear sheets, a flexible attachment flange with different opening sizes, and a nozzle attached to the flexible attachment flange and not directly to the front and rear sheets. As discussed above with reference to the allowance of claim 1, the '447 Smith reference discloses a port tube 52, which is round with similar opening sizes, attached directly to a flexible container and a separate spike holder 50 attached to the port tube.

Accordingly, because the '447 Smith reference failed to disclose each and every element of claim 34, it cannot anticipate claim 34 under §102(e).

Originally filed independent claim 35, which has not been amended, recites a flexible container comprising: a flexible front sheet and a flexible rear sheet attached to one another along a common perimeter; a container port comprising a nozzle integrally molded to a flexible attachment flange attached to the flexible front sheet and flexible rear sheet; the flexible attachment flange comprising a flexible front flange sheet attached to a flexible rear flange sheet along two common edges; a fin extending from each of the two common edges of the flexible attachment flange comprising a first thickness that tapers as it extends away from the common edge to a second thickness; a flexible front flange layer interior surface that temporary contacts, at least in part, a flexible rear flange layer interior surface as the flexible attachment flange is attached to the flexible front sheet and flexible rear sheet by a heat bar.

Claim 35 clearly recites a flexible container comprising "a container port comprising a nozzle integrally molded to a flexible attachment flange attached to the flexible front sheet and flexible rear sheet; the flexible attachment flange comprising a flexible front flange sheet attached to a flexible rear flange sheet along two common edges; a fin extending from each of the two common edges of the flexible attachment flange comprising a first thickness that tapers as it extends away from the common edge to a second thickness".

Again, Applicant submits that the '447 Smith reference discloses a port tube 52 attached directly to a flexible container without an attachment flange. In addition, Smith does not disclose an attachment flange, which is attached to the flexible front and rear sheets, having two

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common edges and a fin extending from each of the two common edges of the flexible attachment flange comprising a first thickness that tapers as it extends away from the common edge to a second thickness. The buttresses 122 that the Examiner claims are "fin[s] (120) (see figures 5-8)" are actually part of the spike holder 50 and not port tube 52, which is attached to the container. Furthermore, there is no indication the buttresses 122 each comprising a first thickness that tapers as it extends away from a common edge to a second thickness.

Accordingly, because the '447 Smith reference failed to disclose each and every element of claim 35, it cannot anticipate claim 35 under §102(e).

Finally, independent claim 36 recites a flexible container comprising: a flexible front sheet and a flexible rear sheet attached to one another along a common perimeter; a first container port comprising a nozzle integrally molded to a first flexible attachment flange, which is attached to the flexible front sheet and flexible rear sheet; a second container port comprising a nozzle integrally molded to a second flexible attachment flange, which is attached to the flexible front sheet and flexible rear sheet, the first and the second flexible attachment flanges each comprising a flexible front flange sheet attached to a flexible rear flange sheet along two common edges and having a first opening and a second larger opening; a web connecting to one common edge of the first flexible attachment flange and to one common edge of the second flexible attachment flange and to the flexible front sheet and flexible rear sheet.

As amended, Applicant submits that the '447 Smith reference does not disclose a container with two nozzles as recited, two attachment flanges as recited, a manner in which the attachment flanges are attached to the flexible front and rear sheets, the configuration with the different opening sizes on the two attachment flanges as recited, or a web connecting the two attachment flanges and to the front and rear sheets as recited. Accordingly, because the '447 Smith reference failed to disclose each and every element of claim 36, it cannot anticipate claim 36 under §102(e).

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New Claims 37-45

New claims 37-45 are dependent claims and depend from independent claim 34, 35, or 36. Accordingly, claims 37-45 are patentable over the '447 Smith reference for at least the same reasons as discussed above for claim 34, 35, or 36.

§103(a) Rejection of Claims 10-15 by
'447 Smith et al. patent in view of Smith et al. patent (US 6,846,305)

In rejecting claims 10-15, the Examiner contends that the '447 Smith reference disclosed essentially as claimed but does not disclose a bag with distinct film layers or a port made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer. The Examiner then relied on the '305 Smith reference to make up for the shortcomings and consider the two references obvious to combine. As further discussed below and without conceding that the two references are combinable, compatible, not teach away from one another, or are defective in other ways, the combination failed to render claims 10-15 obvious.

Claims 10-15 are dependent claims and depend from claim 1. Because the '305 Smith reference is not relied on to show nor does it disclose a nozzle, which has an internal diameter, integrally molded to an attachment flange, which is disposed between the flexible front sheet and flexible rear sheet; wherein the attachment flange comprises two ends and a first attachment flange layer comprising an interior surface and an exterior surface and a second attachment flange layer comprising an interior surface and an exterior surface attached to one another along at least one edge, which is located at one of the two ends, a center section located between the two ends; and wherein the two interior surfaces are spaced apart from one another at the center section and converge at the two ends, the '305 Smith reference does not make up for the deficiencies of the '447 Smith reference. Accordingly, because the combination failed to render claim 1 obvious, they also failed to render claims 10-15 obvious.

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§103(a) Rejection of Claims 23 and 31 by '447 Smith et al. patent in view of Domdowski et al.

In rejecting claims 23 and 31, the Examiner contends that the '447 Smith et al. reference disclosed essentially as claimed but does not disclose a port having a film innerseal affixed to the port or an attachment flange having a pyramid shape. The Examiner then relied on the '431 Domkowski reference to make up for the shortcomings and consider the two references obvious to combine. As further discussed below and without conceding that the two references are combinable, compatible, not teach away from one another, or are defective in other ways, the combination failed to render claims 23 and 31 obvious.

Claims 23 and 31 depend from claim 1. Because the '431 Domkowski et al. reference is not relied on to show nor does it disclose a nozzle, which has an internal diameter, integrally molded to an attachment flange, which is disposed between the flexible front sheet and flexible rear sheet; wherein the attachment flange comprises two ends and a first attachment flange layer comprising an interior surface and an exterior surface and a second attachment flange layer comprising an interior surface and an exterior surface attached to one another along at least one edge, which is located at one of the two ends, a center section located between the two ends; and wherein the two interior surfaces are spaced apart from one another at the center section and converge at the two ends, Domkowski does not make up for the deficiencies of Smith. Accordingly, because the combination failed to render claim 1 obvious, they also failed to render claims 10-15 obvious.

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In view of the foregoing remarks, the Application is thought to be in condition for allowance and early notice thereof is respectfully solicited.

Should the Examiner finds it necessary to speak with Applicant's attorney, he is invited to contact the undersigned at the telephone number identified below.

Respectfully submitted,
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